

No. 11744

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NEW YORK UNDERWRITERS INSURANCE
COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA, ELIZABETH
HART SCOTT and HARRIET ANN SCOTT,

Appellees.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

NOV 20 1947

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

LONG & LEVIT

210 West Seventh Street

Los Angeles 14, Calif.

For Appellee United States of America:

JAMES M. CARTER

United States Attorney

RONALD WALKER

CLARKE E. STEPHENS

Assistants U. S. Attorney

600 U. S. Post Office and Court House Building

Los Angeles 12, Calif.

For Appellees Elizabeth Hart Scott et al.:

BISHOP & HOFFMANN

THOMAS P. WELDON

215 West Fifth Street

Los Angeles 13, Calif. [1*]

In the District Court of the United States for the
Southern Division of California
Central Division

No. 7047-WM

ELIZABETH HART SCOTT and HARRIET ANN
SCOTT,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR MONEY
(for negligence)

With Endorsement of Demand for Trial by Jury

I.

That plaintiffs are residents of the County of Santa Barbara, Southern District of California, Central Division, and that this action is brought under and pursuant to the "Federal Tort Claims Act."

II.

That on January 30th, 1945, defendant, by and through Elmer R. Steffey, a member of the military forces of the United States, who was then and there in the employ of defendant, to wit, a Second Lieutenant in the United States Army Air Corps, then and there stationed at Santa Maria Army Airfield and acting in line of duty and within the scope of his office and employment, and not engaged in combat activities of said military forces, and then and there on a training maneuver, so negligent- [2] ly and carelessly operated and maintained a certain aircraft, to

wit, a P-38 airplane then and there belonging to the defendant United States Government, so that the same hit and struck certain improvements situated upon the real property owned by plaintiffs each as to an undivided one-half interest, in Santa Maria, California, and that as a direct result and proximate cause of the aforesaid negligence of the defendant the improvements were injured and destroyed, to plaintiffs' damage in the sum of \$17,793.68.

III.

That as a further direct result of and a proximate cause of the aforesaid negligent operation of said aircraft, said improvements were rendered untenable and during the time required to repair and rebuild the same, plaintiffs were deprived of and lost the reasonable rental value thereof and the rents therefrom, to their further damage in the sum of \$2,360.00.

IV.

That plaintiffs have been required to and have engaged the services of Sylvester Hoffman and Irving G. Bishop, Esqs. (practicing under the firm name of Bishop & Hoffmann) each of whom is an attorney at law admitted to practice before this Court, and of Thomas P. Weldon, of Counsel, a member of the State Bar of California, and have incurred an obligation to pay said attorneys a reasonable fee as and for their services; that plaintiffs are informed and believe and upon such information and belief allege that an aggregate sum equal to twenty per-

centum (20%) of the amount recovered is and was a reasonable fee for the services rendered and to be rendered by plaintiffs' attorneys in this action.

Wherefore, plaintiffs demand judgment against the [3] defendant in the sum of \$20,153.68, and for their costs of suit, and pray that the Court fix and determine the reasonableness of their attorneys' fees at twenty per centum (20%) of the amount recovered, exclusive of costs, and order payment of said fees by the defendant out of the amount recovered pursuant to Section 422 of the aforesaid Act; and for general relief.

BISHOP & HOFFMANN
& THOMAS P. WELDON,
of Counsel

By Irving G. Bishop
Attorneys for Plaintiffs

DEMAND FOR TRIAL BY JURY

Come now the plaintiffs and demand a trial of this cause before and by a jury.

BISHOP & HOFFMANN
& THOMAS P. WELDON, of Counsel

By Irving G. Bishop
Attorneys for Plaintiffs [4]

[Verified.]

[Endorsed]: Filed May 27, 1947. [5]

[Title of District Court and Cause]

SUMMONS

To the Above Named Defendant:

You are hereby summoned and required to serve upon Bishop & Hoffmann, plaintiff's attorneys, whose address is 215 W. 5th Street, Los Angeles 13, California, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal of Court]

EDMUND L. SMITH,

Clerk of Court.

By Charles A. Seitz,

Deputy Clerk.

Date: May 27, 1947.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure. [6]

RETURN ON SERVICE OF WRIT

United States of America,

Southern District of California—ss:

I hereby certify and return that I served the annexed Summons and Complaint on the therein-named United States of America by mailing by registered mail ~~handing to and leaving~~ a true and

correct copy thereof ~~with~~ to the U. S. Attorney General personally at Washington, D. C., ~~in said District~~ on the 28th day of May, 1947.

ROBERT E. CLARK

U. S. Marshal.

By Dwight P. Snyder

Deputy.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss:

I hereby certify and return that I served the annexed Summons and Complaint on the therein-named United States of America by handing to and leaving a true and correct copy thereof with Gertrude M. Johnson, Clerk, U. S. Attorney's Office, Los Angeles, authorized to accept service for U. S. Attorney, personally at Los Angeles, California in said District on the 28th day of May, 1947.

ROBERT E. CLARK

U. S. Marshal.

By Dwight P. Snyder

Deputy.

Marshal's Fees \$4.00. Mileage \$. Expenses \$.30.
Total \$4.30.

[Endorsed]: Filed Jun. 18, 1947. [7]

[Title of District Court and Cause]

MOTION BY NEW YORK UNDERWRITERS INSURANCE COMPANY OF NEW YORK TO INTERVENE AS PLAINTIFF

New York Underwriters Insurance Company of New York moves the Court for leave to intervene as a plaintiff in this action and in support of its motion alleges and shows:

I.

The above entitled cause was commenced in this Court by the filing of complaint on the 27th day of May, 1947. Defendant has been served with process, but has not yet filed its answer.

II.

By their complaint, plaintiffs seek to recover damages against defendant under Public Law 601, Chapter 753 known as the Federal Tort Claims Act. Said damages are alleged to have arisen out of the negligent maintenance and operation of a United States [8] Army airplane by an employee of the defendant on January 30, 1945, as a result of which said airplane crashed into a building belonging to plaintiffs located at Santa Maria, California, thereby damaging the same.

III.

Prior to the said 30th day of January, 1945, your petitioner had issued to plaintiffs a policy of fire insurance covering said building and a policy of fire insurance covering loss of rental income from said building, which said policies of insurance were in full force and effect at the time of said airplane crash, all as more particularly ap-

pears from the proposed complaint in intervention of petitioner, the original of which is hereto attached and to which reference is hereby made the same as though herein set forth in full. That, as appears from said proposed complaint in intervention, as a result of the damage to said building caused by said airplane crash, and pursuant to the provisions of said policies, petitioner made the following payment to its said assureds:

<u>Policy No.</u>	<u>Property Insured</u>	<u>Amount</u>
136257	Building	\$9,623.37
134296	Rental Income	1,650.00

By virtue of said payments, petitioner to the extent of such payments, became subrogated to all rights of its assureds against defendant for the damage to said property.

IV.

Petitioner is entitled to intervene herein under Rule 24(a) because:

a) The representation of the interest of petitioner by plaintiffs is or may be inadequate and petitioner is or may be bound by a judgment in this action;

b) The complaint herein was filed without the knowledge or consent of petitioner and it is the desire of petitioner to be represented by counsel of its own choosing; [9]

c) In the event of a judgment herein for plaintiffs for less than the value of said property as alleged in the complaint, a dispute may arise between plaintiffs and petitioner as to the distribution of such amount between plaintiffs and petitioner, and such dispute can be avoided if petitioner is permitted to intervene herein.

V.

Petitioner should be permitted to intervene herein under Rule 24(b) in that its claim and the main action have questions of law and fact in common as more particularly appears from the proposed complaint in intervention and the complaint herein.

VI.

Petitioner is entitled to intervene herein under Rules 17, 19, 20 and 21 in that petitioner is a real party in interest herein.

VII.

The granting of this motion will not to any extent delay or prejudice the adjudication of the rights of plaintiffs or defendant.

VIII.

This motion will be made upon all pleadings and papers on file herein and the affidavit of William H. Levit filed herewith.

Wherefore, petitioner prays that this Court make an order granting it permission to file the attached complaint in intervention against defendant, and for such other and further relief as to this Court seems just.

Dated: July 11, 1947.

LONG & LEVIT

By William H. Levit

Attorneys for Petitioner [10]

NOTICE OF MOTION

To Sylvester Hoffmann and Irving G. Bishop, Attorneys for Plaintiffs; James M. Carter, Esq., United States Attorney, Attorney for Defendant.

Please take notice that the undersigned will bring the above motion on for hearing before this Court in the courtroom of Honorable William C. Mathes, United States District Judge, located in the United States Post-office and Court House Building, Los Angeles, California, on the 21st day of July, 1947, at 10:00 o'clock A. M. of said day or as soon thereafter as counsel can be heard.

LONG & LEVIT

By William H. Levit

Attorneys for Petitioner

STATEMENT OF REASONS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE

1. Petitioner having paid a portion of plaintiffs' alleged loss thereby became subrogated to plaintiffs' rights against defendant. Having become so subrogated petitioner is certainly a proper, and probably a necessary, party to this litigation and should be permitted to intervene therein to properly assert and protect its rights.

Sloan v. Appalachian Electric Power Co., (USDC, W. Va.), 27 Fed. Supp. 108

Williams v. Powers (USDC, Ohio), 2 F. R. D. 362 and see also footnote #94, 6 Cyc. of Fed. Proc. (2nd Ed.), p. 137, where it is stated:

"Under present procedure, there seems no reason why in such cases insurer and insured would not both

be necessary parties and in position to sue, the one [11] joining the other or showing, in accordance with Rule 19, why they are not joined.”

2. Since the cause of action arose in California, it is pertinent to refer to the following California authorities which hold that the insurer is a proper party to an action to recover from a wrongdoer where it has paid a portion of the loss.

Fairbanks v. S. F. Ry. Co., 115 Cal. 579, 47 P. 450

Offer v. Superior Court, 194 Cal. 114, 228 P. 11

3. That petitioner is a real party in interest under Rule 17(a), see:

Williams v. Powers, *supra*

Fairbanks v. S. F. Ry. Co., *supra*

Offer v. Superior Court, *supra*

Respectfully submitted,

LONG & LEVIT

By William H. Levit

Attorneys for Petitioner

Receipt of copies of the following is hereby acknowledged: Motion of New York Underwriters Insurance Company of New York to intervene as plaintiff. Notice of Motion. Statement of reasons and memorandum of Points and Authorities in Support of Motion to Intervene. Complaint in Intervention. Affidavit of William H. Levit. July 11, 1947. Sylvester Hoffmann & Irving G. Bishop, by Irving G. Bishop, Attorneys for Plaintiffs. July 11, 1947. James M. Carter, United States Attorney, by Gertrude M. Johnson, Attorney for Defendant.

[Endorsed]: Filed Jul. 11, 1947. [12]

[Title of District Court and Cause]

AFFIDAVIT OF WILLIAM H. LEVIT IN
SUPPORT OF MOTION TO INTERVENE

State of California

County of Los Angeles—ss

William H. Levit being first duly sworn deposes and says:

That he is a member of the firm of Long & Levit, attorneys for petitioner and makes this affidavit for and on behalf of petitioner in support of its motion to intervene herein.

That the complaint herein was filed without the knowledge or consent of petitioner and it is the desire of petitioner that in the prosecution of its claims against defendant, it be represented by its own counsel, viz., the law firm of Long & Levit.

That the amounts claimed in plaintiffs' complaint for damage to their building and for loss of rental income, viz., the [13] sums of \$17,793.68 and \$2,360.00, respectively, are in excess of the amounts agreed upon between plaintiffs and petitioner as the amount of damage to such building and loss of rental income in adjusting the loss under the policies of insurance issued by petitioner to plaintiffs, said amounts so agreed upon being the sum of \$9,627.02 as the damage to said building and the sum of \$1,860.00 for loss of rental income.

That by reason of such difference in alleged values, the interests of petitioner cannot be adequately protected herein unless it is permitted to intervene herein.

WILLIAM H. LEVIT

Subscribed and sworn to before me this 11th day of July, 1947.

RUTH E. SPANGLER

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires June 9, 1950.

[Endorsed]: Filed Jul. 11, 1947. [14]

In the District Court of the United States for the
Southern District of California
Central Division

No. 7047-WM

ELIZABETH HART SCOTT and HARRIET ANN
SCOTT,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

NEW YORK UNDERWRITERS INSURANCE
COMPANY, a corporation,

Plaintiff in Intervention,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT IN INTERVENTION

Now comes plaintiff in intervention and alleges as follows:

I.

That plaintiff in intervention, New York Underwriters Insurance Company is and was at all times herein mentioned, a corporation organized and existing under and by virtue of the laws of the State of New York and authorized to transact the business of fire insurance in and by the State of California. [15]

II.

That prior to the 30th day of January, 1945, plaintiff in intervention had issued two policies of fire insurance on the California Standard Form to Elizabeth Hart Scott and Harriet Ann Scott, insuring their property and in the amounts hereinafter described:

<u>Policy No.</u>	<u>Property Insured</u>	<u>Amount</u>
136257	Buildings located at Nos. 112-114 South Broadway, Santa Maria, Calif.	\$11,000.00
134296	Loss of rental income on said buildings	3,300.00

that said policies and each of them were in full force and effect on the 30th day of January, 1945.

III.

That on the 30th day of January, 1945, and in the performance of the acts hereinafter referred to, Second Lieutenant Elmer R. Steffey of the United States Army Air Force was an employee of the defendant stationed at the Santa Maria Air Base, and engaged in the course and scope of his said employment; that at all times herein mentioned defendant was the owner and operator of a certain P-38 airplane assigned to the United States Army Air Force at the Santa Maria Air Base; that on the 30th

day of January, 1945, said Second Lieutenant Elmer R. Steffey, and while engaged in the course and scope of his employment by defendant, as aforesaid, was operating the aforementioned airplane in the vicinity of Santa Maria, California; that at the said time and place defendant so negligently and carelessly operated and maintained said airplane that it fell onto and collided with the buildings located at Nos. 112 and 114 South Broadway Street, Santa Maria, California; thereby causing a fire to break out in said buildings; that said crash, collision and fire were proximately caused by the negligence and carelessness of defendant as aforesaid. [16]

IV.

That said fire, so caused by the negligence and carelessness of defendant, as aforesaid, damaged said buildings and made the same untenable thereby causing loss of rental income to plaintiffs; that as a result of said fire damage and loss of rental income, and in accordance with the provisions of said policies of insurance, plaintiff in intervention paid to its said insureds, the following amounts:

<u>Policy No.</u>	<u>Amount Paid</u>	<u>Date of Payment</u>
136257	\$9,623.37	8/7/45
134296	1,650.00	9/6/45

that the damage to said buildings and loss of rental income by plaintiffs, so caused by said fire, was not less than the amounts so paid by plaintiff in intervention under its said policies therefor.

V.

That by virtue of said payments and as provided in each of said policies, plaintiff in intervention became subrogated, to the extent of said payments, to all of the rights of its assureds against defendant for the damage to said buildings and loss of rental income.

VI.

That on the 20th day of June, 1947, plaintiff in intervention filed a claim with the War Department for the damage so caused by defendant as aforesaid; that on the 25th day of June, 1947, plaintiff in intervention filed with the War Department, notice of withdrawal of said claim, effective fifteen (15) days from said date.

VII.

That Santa Maria, California, is and was on the 30th day of January, 1945, located in the Southern District of California, Central Division; that this Honorable Court is given original jurisdiction of the claims herein set forth under the provisions of Public Law 601, Chapter 753, known as the Federal Tort Claims Act. [17]

Wherefore, plaintiff in intervention prays for judgment against defendant in the sum of \$11,273.37, together with costs of suit, a reasonable attorneys' fee out of said recovery for its attorneys and such other relief as to the Court may seem proper.

LONG & LEVIT

By William H. Levit

Attorneys for Plaintiff in Intervention

[Verified.]

[Endorsed]: Lodged Jul. 11, 1947. [18]

In the District Court of the United States
Southern District of California
Central Division

No. 7047-WM

ELIZABETH HART SCOTT and HARRIET ANN
SCOTT,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

This cause having heretofore come before the court for hearing on motion of New York Underwriters Insurance Company of New York, a corporation, for leave to intervene, and the motion having been heard and submitted for decision, and it appearing to the court that the Federal Tort Claims Act [28 U. S. C., §931] does not expressly grant consent to suit by the subrogee of a claimant [cf. 31 U. S. C., §203], and that consent of the Government to be sued, being a relinquishment of sovereign immunity, must be strictly interpreted [United States v. Sherwood, 312 U. S. 584, 590 (1940); Defense Supplies Corporation v. United States Lines Co., 148 F. (2d) 311, 312 (C. C. A. 2nd, 1945)]; [19]

It Is Now Ordered that the motion of New York Underwriters Insurance Company of New York, a corporation, for leave to intervene as party plaintiff in this action be and is hereby denied.

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to the attorneys for the parties appearing in this cause.

Dated: July 28, 1947.

WM. C. MATHES

United States District Judge

Judgment entered Jul. 28, 1947. Docketed Jul. 28, 1947. Book 11, page 63 C. Edmund L. Smith, Clerk; by Theodore Hocke, Deputy.

[Endorsed]: Filed Jul. 28, 1947. [20]

[Title of District Court and Cause]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS

Notice Is Hereby Given that New York Underwriters Insurance Company hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order denying said party leave to intervene as party plaintiff in this action, entered in this action on July 28, 1947.

LONG & LEVIT

By William H. Levit

Attorneys for Intervenor and Appellant New York
Underwriters Insurance Company

[Endorsed]: Filed & mld. copies to attys. for deft. & plf., Clarke E. Stephens & Bishop & Hoffmann Aug. 27, 1947. [21]

ROYAL INDEMNITY COMPANY

Head Office: New York

A New York Corporation

[Crest]

A Stock Company

Bond No. S 246536

In the District Court of the United States for the
Southern District of California
Central Division

No. 7047-WM

ELIZABETH HART SCOTT and HARRIET ANN
SCOTT,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

UNDERTAKING FOR COSTS ON APPEAL

Know All Men By These Presents, That Royal Indemnity Company, a corporation, organized and existing under the laws of the State of New York, and duly licensed to transact business in the State of California, is held and firmly bound unto Elizabeth Hart Scott and Harriet Ann Scott, plaintiffs and United States of America, defendant in the above entitled case, in the penal sum of Two Hundred Fifty and no/100 (\$250.00) dollars, to be paid to said parties, their successors, assigns or legal representatives, for which payment well and truly to be made, the Royal Indemnity Company binds itself, its successors and assigns firmly by these presents.

The Condition of the Above Obligation Is Such, That Whereas New York Underwriters Insurance Company of New York is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order of the United States District Court, Southern District of California, Central Division, made and entered on July 28, 1947 denying the motion of said party to intervene as party plaintiff in this action.

Now, Therefore, if the above named appellant shall prosecute said appeal to effect and answer all costs which may be adjudged against it if the appeal is dismissed, or the order affirmed, or such costs as the Appellate Court may award if the order is modified, then this obligation shall be void; otherwise to remain in full force and effect.

It Is Hereby Agreed by the Surety that in case of default or contumacy on the part of the Principal or Surety, the Court may, upon notice to them of not less than ten days, proceed summarily and render order against them, or either of them, in accordance with their obligation and award execution thereon.

Signed, Sealed and Dated this 26th day of August, 1947.

The Premium Charged for This Bond Is \$10.00 Per Annum.

ROYAL INDEMNITY COMPANY

By A. A. Christian

Attorney in Fact

State of California,
County of Los Angeles—ss.

On this 26th day of August in the year 1947, before me, L. Hollingshead, a Notary Public in and for the County and State aforesaid, personally appeared A. A. Christian, known to me to be the person whose name is subscribed to the within instrument and known to me to be the Attorney-in-Fact of Royal Indemnity Company and acknowledged to me that he subscribed the name of the said Company thereto as principal, and his own name as Attorney-in-Fact.

L. HOLLINGSHEAD

Notary Public in and for said County and State

My Commission Expires May 14, 1949.

Examined and recommended for approval as provided in Rule 8.

WILLIAM H. LEVIT

Attorney

I hereby approve the foregoing dated this 21 day of Aug., 1947.

EDMUND L. SMITH

Clerk U. S. District Court, Southern District
of California

By Edw. Drew

Deputy

[Endorsed]: Filed Aug. 27, 1947. [22]

[Title of District Court and Cause]

APPELLANT'S STATEMENT OF POINTS

Intervenor and appellant will rely upon the following points in the prosecution of its appeal from the order denying leave to intervene herein:

I.

The District Court erred as Follows:

1. In denying intervenor's and appellant's motion to intervene as party plaintiff.
2. In holding that the Federal Tort Claims Act (28 U. S. C. sec. 931) does not permit suits by subrogees.
3. In holding that 31 U. S. C. sec. 203, which prohibits assignments of claims against the United States is applicable to subrogated claims.

LONG & LEVIT

By William H. Levit

Attorneys for Intervenor and Appellant New York Underwriters Insurance Company of New York [23]

[Verified.] [24]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Aug. 29, 1947. [25]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 29 inclusive contain full, true and correct copies of Complaint for Money; Summons; Motion by New York Underwriters Insurance Company of New York to Intervene as Plaintiff; Affidavit of William H. Levit in Support of Motion to Intervene; Complaint in Intervention; Order; Notice of Appeal; Cost Bond on Appeal; Statement of Points and Designation of Record which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$8.25 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 24 day of September, A. D. 1947.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

[Endorsed]: No. 11744. United States Circuit Court of Appeals for the Ninth Circuit. New York Underwriters Insurance Company, Appellant, vs. United States of America, Elizabeth Hart Scott and Harriet Ann Scott, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed September 25, 1947.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Circuit Court of Appeals of the United States
in and for the Ninth Circuit

No. 11744

NEW YORK UNDERWRITERS INSURANCE
COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS AND
DESIGNATION OF RECORD

Now comes the New York Underwriters Insurance Company, appellant above named, and for its Statement of Points upon which it intends to rely in this appeal adopts the Statement of Points filed by it in the United States District Court in connection with its notice of appeal and included in the transcript of record prepared and certified by the Clerk of said District Court.

Appellant designates the entire record herein to be printed.

LONG & LEVIT

By William H. Levit

Attorneys for Appellant

[Affidavits of Service by Mail.]

[Endorsed]: Filed Oct. 6, 1947. Paul P. O'Brien,
Clerk.

